

HOUSE No. 3134

The Commonwealth of Massachusetts

PRESENTED BY:

Martin J. Walsh

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act to promote reliable and high quality utility service in the commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martin J. Walsh	13th Suffolk

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 3388 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT TO PROMOTE RELIABLE AND HIGH QUALITY UTILITY SERVICE IN THE
COMMONWEALTH.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority
of the same, as follows:*

i . SECTION 1. Section 40A of chapter
82 of the General Laws, as appearing in the 2002
Official Edition, is hereby amended by inserting
at the end thereof the following:-

ii . The designation markings required by this section
shall be performed by trained permanent employees
of the utility unless otherwise authorized by a
collective bargaining agreement. If no such
trained permanent employees are available, the
department of telecommunications and energy may
certify and license outside companies to perform
such designation markings. Moreover, to receive a
building permit from any municipality, or

political subdivision thereof, for any work requiring excavation, an individual shall provide certification of compliance with this section. Any utility that violates any provision of this section shall forfeit a penalty as determined by the department of telecommunications and energy. Penalties incurred under this section shall not be included as expenses in connection with the establishment of rates by said company.

iii. **SECTION 2.** Section 1C of Chapter 164 of the General Laws, as appearing in the 2002 Official Edition, is hereby amended by striking said section 1C and inserting in placed thereof the following:-

iv.

v. Section 1C. Any marketing company or other competitive or unregulated operation or entity of an electric or gas company shall be in the form of an affiliate of said company and shall be separate from any generation, transmission, or distribution company affiliate of the electric or gas company. The department shall promulgate standards of conduct which shall ensure the separation of such affiliates and which shall be consistent with the following provisions: (i) a distribution or gas company, or an affiliate thereof, shall not directly or indirectly use proceeds obtained from providing regulated

40 services, or assets obtained with such proceeds, to
41 subsidize non-regulated services; said prohibition
42 shall extend to the use of vehicles, service tools,
43 instruments, and employees, and the costs, salaries
44 and benefits related thereto; (ii) a distribution or
45 gas company shall not give any affiliates any
46 preference over non-affiliated suppliers or customers
47 thereof in matters relating to any product or service;
48 (iii) all products, services, discounts, rebates, and
49 fee waivers offered by a distribution or gas company
50 shall be available to all customers and suppliers
51 simultaneously, to the extent technically possible, on
52 a comparable basis; (iv) a distribution or gas company
53 shall process all same or similar requests for any
54 product, service, or information in the same manner
55 and within the same period of time; (v) a distribution
56 or gas company shall not condition the provision of
57 any product, service, or rate agreement by the
58 distribution or gas company to the provision of any
59 product or service to which an affiliate is involved;
60 (vi) a distribution or gas company shall not share
61 with any affiliate any market information acquired or
62 developed by the distribution or gas company in the
63 course of responding to requests for distribution or
64 gas service or any proprietary customer information
65 including, but not limited to, mailing lists,

66 marketing information, and other customer related
67 information, unless the use of such information is
68 available to all commercial businesses on a non-
69 discriminatory basis; (vii) a distribution or gas
70 company shall refrain from presenting that any
71 advantage accrues to customers or others in the use of
72 its services as a result of that customer or others
73 dealing with any such affiliate; (viii) a distribution
74 or gas company shall not engage in joint advertising
75 or marketing programs with any affiliate; and (ix)
76 employees of a distribution or gas company shall not
77 be shared with, and shall be physically separated from
78 those of, any generating or marketing affiliate.

79 vi. Upon the filing of a written complaint with the
80 department requesting determination of compliance by a
81 distribution or gas company, or an affiliate of a
82 distribution or gas company, with the provisions of
83 this section or any rule, order, or other action
84 promulgated pursuant thereto, the department shall
85 investigate the complaint, and upon the determination
86 that there are reasonable grounds to proceed, the
87 department shall promptly initiate formal complaint
88 proceedings. If the department determines that there
89 is no reasonable basis for initiating a formal
90 complaint proceeding, it shall so advise, in writing,
91 the person filing such written complaint within 90

92 days. The department shall establish such penalties as
93 necessary to assure compliance; provided, however,
94 that any penalty incurred under this section shall not
95 be included as expenses in connection with the
96 establishment of rates by said distribution or gas
97 company. Any final judgment or determination issued by
98 the department, as a result of an investigation or
99 otherwise, that an electric or gas company or an
100 affiliate thereof has violated either (1) the
101 provisions of this section; or (2) any rule, order, or
102 settlement promulgated pursuant thereto, shall be
103 prima facie evidence in any civil action against the
104 distribution or gas company or its affiliate to
105 recover damages or obtain injunctive relief.

106 vii. A violation of this section shall
107 constitute an unfair or deceptive act or practice
108 under the provisions of chapter 93A, notwithstanding
109 any contrary provision of any other law of the
110 commonwealth or any exemption provided by said chapter
111 93A.

112 viii. It shall be the duty of the Attorney
113 General of the Commonwealth to institute proceedings
114 in the Superior Court to prevent and restrain
115 violations of this section. When the Attorney General
116 has reason to believe an electric or gas company or
117 its affiliate is engaging in a violation of this

section, the Attorney General shall bring an action to enjoin the electric or gas company, the affiliate, or both, from engaging in a violation of this section.

ix.

x. **SECTION 3.** Section 1E(b) of Chapter 164 of the General Laws, as so appearing, is hereby amended by striking in line 16 the words "the effective date of this act" and inserting in place thereof the following:-

xi. November 1, 1997

xii.

xiii. SECTION 4. Section 1E(b) of Chapter 164 of the General Laws, as so appearing, is hereby amended by striking the last sentence and inserting in place thereof the following:

At the time of any filings made pursuant to this section, if staffing levels have decreased below those in effect on November 1, 1997, the department shall hold evidentiary hearings to determine if staffing levels in said company are adequate; provided further, that unless the company establishes, by clear and convincing evidence, that said staffing levels are adequate, the department shall hold that staffing levels within any function, department, or work unit, below those in existence on November 1, 1997 are unsafe and therefore not in compliance with this section. The results of the hearings shall be binding on

both parties and the civil penalty for non-compliance shall be no less than \$10,000.00 per day; provided, however, that the maximum civil penalty shall not exceed \$500,000 for any related series of violations. Nothing in this paragraph shall prevent reduction of forces below the November 1, 1997 level through early retirement and severances negotiated with labor organizations before said date. The preceding provisions of this paragraph notwithstanding, in no event shall the department fail to establish benchmarks for employee staffing levels for each distribution, transmission and gas company by September 1, 2005, regardless of whether any company has at any time used, implemented or discontinued the use of any set of performance based rates.

SECTION 5. Section 1F(7) of Chapter 164 of the General Laws, as so appearing, is hereby amended by adding after the phrase "1997" in line 224 the following:-

and, in accordance with Section 1E, shall establish benchmark staffing levels adequate to ensure that service quality and reliability do not decline below levels that existed on November 1, 1997.

xiv. **SECTION 6.** Section 75A of Chapter 164 of the General Laws, as so appearing, is hereby amended

164 by adding at the end thereof the following new
165 paragraph:-

166 xv. "Upon installation of a meter measuring gas
167 supplied to any premises, only the authorized
168 permanent employees of the gas company completing
169 said installation shall be authorized to turn on
170 the gas supply; provided further, that the newly
171 installed meter shall remain locked on the
172 service side by the gas company until the local
173 gas inspector inspects the installation of piping
174 to the new gas appliance(s). Upon the successful
175 completion of the inspection, the lock shall only
176 be removed by an authorized permanent employee of
177 the gas company; provided further, that said
178 permanent employee of the gas company shall then
179 light all gas appliances and check all gas
180 related equipment. Any gas company that violates
181 any provision of this section shall forfeit a
182 penalty as determined by the department.
183 Penalties incurred under this section shall not
184 be included as expenses in connection with the
185 establishment of rates by said company.

186 xvi. **SECTION 7.** Section 75F of Chapter 164 of the
187 General Laws, as so appearing, is hereby amended
188 by striking out in lines 8 through 9 the word

189 "hundred" and inserting in place thereof the
190 following new word:- thousand

191 xvii. **SECTION 8.** Section 76 of Chapter 164 of the
192 General Laws, as so appearing, is hereby amended
193 adding at the end thereof the following:-

194 xviii. The department shall require gas companies to
195 instruct their authorized permanent employees to
196 annually survey their gas piping system for leak
197 detection. Upon discovery of a natural gas leak,
198 said leak shall be investigated, graded, logged
199 and monitored by authorized permanent employees
200 of the gas company and reported to the
201 department; provided further, that officers and
202 employees of the department shall randomly
203 inspect reported leaks on a regular basis. For
204 said regular inspections the department shall
205 collect from the gas company such reasonable fees
206 as it may from time to time prescribe. Any gas
207 company which violates any provision of this
208 section shall forfeit a penalty as determined by
209 the department. Penalties and fees incurred under
210 this section shall not be included as expenses in
211 connection with the establishment of rates by
212 said company.

213 **SECTION 9.** Chapter 164 of the General Laws, as so appearing, is
214 hereby further amended by inserting after section 105A the
215 following new section:-

216 Section 105B. Every gas corporation or municipal gas department
217 engaged in the distribution of gas within the commonwealth shall
218 annually conduct a survey of all schools, student quarters, day
219 care centers, kindergartens, pre-schools, churches, hospitals,
220 elder centers, nursing homes, rehabilitation centers, libraries,
221 fire stations, police stations, theatres, arenas, and all public
222 buildings within their service territories by authorized
223 permanent employees of the gas company. Said survey shall
224 include tests for gas leakage and the visual inspection of all
225 accessible gas facilities and gas appliances in the structure.
226 Any gas company which violates any provision of this section
227 shall forfeit a penalty as determined by the department.
228 Penalties incurred under this section shall not be included as
229 expenses in connection with the establishment of rates by said
230 company.

231 **SECTION 10.** Section 115A of Chapter 164 of the General Laws, as
232 so appearing, is hereby amended by striking in line 9 the word
233 "five" and inserting thereof the following new word:- fifty

234 **SECTION 11.** Section 124I of Chapter 164 of the General Laws, as
235 so appearing, is hereby amended by striking out said section
236 124I in its entirety and inserting in place thereof the
237 following new section:-

238 124I. Each gas company shall upon the termination of service by
239 a customer shut off said service within thirty days after
240 receiving notice of the termination of service by said customer.
241 Said company shall use only authorized permanent employees in
242 complying with this section.

243 **SECTION 12.** Chapter 164 of the General Laws, as so appearing, is
244 hereby further amended by inserting after section 124I the
245 following new section:-

246 124J. Any company found by the department to have willfully
247 violated sections one hundred and twenty-four A to one hundred
248 and twenty-four I, inclusive, shall be assessed a penalty after
249 a hearing by the department, in an amount not to exceed one
250 thousand dollars. Penalties and fees incurred under said
251 sections 124A through 124I shall not be included as expenses in
252 connection with the establishment of rates by said company.

253 **SECTION 13.** Section 29 of chapter 65 of the Acts of 2004, is
254 hereby amended by striking the in the first sentence the word

255 "except" and inserting in place thereof the following:-

256 including

257 **SECTION 14.** Section 29 of chapter 65 of the Acts of 2004, is

258 hereby amended by striking the in the third sentence the word

259 "except" and inserting in place thereof the following:- or

260 **SECTION 15.** Chapter 501 of the Acts of 2002 is hereby amended by

261 adding after the first sentence the following:-

262 Any company found by the department to have willfully violated

263 this section shall be assessed a penalty in an amount not to

264 exceed five hundred dollars for each violation. Penalties and

265 fees incurred under this section shall not be included as

266 expenses in connection with the establishment of rates by said

267 company.

268 **SECTION 16.** Section 75A of Chapter 164 of the General Laws, as

269 so appearing , is hereby amended by adding at the end thereof

270 the following new paragraph:-

271 Any new natural gas service shall be initially activated into a

272 consumer's residence or business only by qualified personnel

273 under state and federal regulations.

274 **Section 17.** Chapter 501 of the Acts of 2002 is hereby amended by

275 adding after the first sentence the following:-

276 All paving contractors are to utilize a one- call system to
277 allow operators to mark out involved gate boxes before paving if
278 they have not already been raised prior to a paving project
279 initiation.

280 No paving contractor shall, except in an emergency , pave any
281 public way unless notifying the "one-call" system and/or the gas
282 company (s) in that jurisdiction at least 72 hours, exclusive of
283 Saturdays, Sundays and legal holidays but not more than 30 days
284 before the proposed paving is to be conducted. Such initial
285 notice shall set forth a description of the paving location in
286 the manner as herein defined. In addition, such initial notice
287 shall indicate the paving project in its entirety.

288 The paving contractor can place a paving ring around the value
289 box and the operator can raise the box after the paving. This
290 should be required whether the paver plans to cut grade or not.

291 **Section 18.** Chapter 164 of the General Laws, as so appearing, is
292 hereby further amended by inserting after section 105A the
293 following new section:-

294 Section 105C. All LNG facilities in the Commonwealth will have
295 at least one person in the control room at all times while the
296 LNG facility is storing LNG.

297 **Section 19.** Section 76 of Chapter 164 of the General Laws, as so
298 appearing, is hereby amended adding at the end thereof the
299 following:-

300 Each gas service provided by a gas company or municipal lighting
301 plant to a consumer shall be inspected for corrosion and leak
302 surveyed as required by all state and federal regulations by the
303 company or municipal lighting plant at the premises of the
304 consumer.

305 Any gas company or municipal lighting plant which violates any
306 provision of this section, unless in the opinion of the
307 department such violation is due to unavoidable cause, accident
308 or lack of materials, shall forfeit twenty five dollars for each
309 service which is not inspected for corrosion and leak surveyed
310 as provided herein. Forfeitures incurred under this section
311 shall not be included as expenses in connection with the
312 establishment of rates by said companies.

- 313 1.
314 2.